

## SOME THEORETICAL ASPECTS OF MODERN CLASSIFICATION OF FINANCIAL SANCTION

*The article analyzing existing views on the institution of financial responsibility, including clustering analysis and classification of financial sanctions correct existing classifications is necessary for legislators and business financial relationships.*

**Key words:** financial and law responsibility, financial and law sanction, signs of financial and law sanction.

### **I. П. Устинова**

*Деякі теоретичні аспекти сучасної класифікації фінансового дозволу*

*У статті проводиться аналізування існуючих думок щодо інституту фінансової відповідальності, зокрема, аналізу групування та класифікації фінансових санкцій, правильність існуючих класифікацій, що необхідно для законодавця та суб'єктів фінансових правовідносин.*

**Ключові слова:** класифікація фінансових санкцій, пеня, штраф.

### **И. П. Устинова**

*Некоторые теоретические аспекты современной классификации финансового разрешения*

*В статье проводится анализ существующих мнений относительно института финансовой ответственности, в частности, анализа группирования и классификации финансовых санкций, правильность существующих классификаций, что необходимо для законодателя и субъектов финансовых правоотношений.*

**Ключевые слова:** классификация финансовых санкций, пеня, штраф.

The purpose of classification financial and legal sanctions are, above all, the need to clarify their legal features, along with other similar measures determining the functionality of financial and legal sanctions and provided methods of calculating and determining the legal grounds features the use of financial and legal penalties.

The rapid development of the financial system at present involves a relevant theoretical revaluation of the basic questions that make up the existing financial legislation. Correct and unambiguous interpretation and theoretical foundation of the classification of types of financial sanctions is my great practical importance in the application of the finance, administrative and commercial law and judicial practice on financial matters and unambiguous reading of regulations.

The article is a study of classification financial penalties in time and to express their own views on current scientific approaches to these develop-

ments. Classification based on the same system of sanctions is necessary to develop the relationship of components and subsystems [1, p. 60].

A variety rule of Finance determines the existence of different financial and legal penalties that can be classified according to different criteria. Given the ambiguous approach to the concept of «financial and legal sanction», the views of scientists disagree on the classification as though she paid attention to scientists of different periods.

Professor Y. Rovinsky identified the following types of financial and legal sanctions, penalties and fines; termination of financing capital construction; enforcement of unpaid term and tax payments; cash charges [2, p. 126].

In our view, united in the above-mentioned classification of types of sanctions, by taking into account the relations of different nature, which does not compare them based on the same grounds.

As noted earlier, R. Usenko shared financial and legal sanction for such species. By way of imposi-

tion - by charging penalties and sanctions extraction [3, p. 64].

The degree of certainty:

- absolutely certain, that is, that cannot be reduced or increased body uses them;
- relatively defined those with higher and lower limit size;
- financial penalties as a component of cumulative sanction (those that include measures of various kinds of legal liability) [3, p. 72].

Also, according to R. Usenko, it is possible the distribution of financial – legal sanctions for clearing criteria: those that are charged at a fixed amount; fold to a certain amount; in the non-taxable minimum incomes [3, p. 159]. With such division should agree.

With some refinement can also use classification which was proposed by A. Titov. In particular, one of the reasons for the separation of financial and legal penalties proposed a subjective criterion. So they are divided on penalties applicable, to organizations, institutions and enterprises; to officials; to citizens [4, p. 52].

The objection is only the selection of officials as a separate entity, as well known is the fact that officials are not subjects of the financial liability.

O. Musyka thinks that financial and legal sanctions are divided into groups according to their homogeneity, the author finds interesting criterion for classification: violations of budget legislation; breach of licensing; violations of fiscal discipline and tax legislation; violations of cash discipline; violations of securities laws and stock exchange [5, p. 65-66]. This classification supports A. Orlyuk [6, p. 326].

Regarding the above it should be noted that the third paragraph incorrectly differentiate two phenomena as violations of fiscal discipline absorbed violation of tax laws. Furthermore, it should be noted that such detailed classification leads to excessive fragmentation and dilution of group financial and legal penalties. In addition, this division does not include the legal nature of financial and legal sanctions in general.

According to L. Savchenko should provide the right recovery (direction of the damages caused by the state or local government financial offense) and punitive (for financial offenses set to punish the

offender) financial and legal penalties. The right replacement sanction is a fine, punitive sanction is set in a fine, the amount of which is defined by law [7, p. 71]. We believe that this thesis has the right to exist, but it does not significantly affect the practical mechanism for sanctions and legislation, and is purely theoretical value.

Another group representing the cumulative financial and legal sanctions that include two mandatory punishments (penalties), which should be applied to the offender. Cumulating financial legislation appears that both the offender a fine of fines and penalties [8, p. 339].

Z. Bud'ko as a criterion of classification financial and legal sanctions chose the specific scope of their application. By this criterion, the sanctions fall on the budget, currency, cash, money (tax and non-tax) [9]. This view by dividing altogether and recommends the legislator to clearly prescribing such a criterion in the legislation, which will apply the legislation in practice fewer errors.

As noted, all kinds of sanctions are the means of influence and which is: foreign exchange - for violation of currency regulation and currency control; Cash – for irregularities receiving, issuing, storing cash; penalties related to tax and non-tax payments – in non-payment or late payment of tax and non-tax payments and so on.

We cannot unequivocally support the thesis that Z. Bud'ko that budgetary sanctions not related to the financial liability, because in this case no additional cash charges, however, and are inherently financial and legal penalties.

A group of scientists who are considering financial and legal sanctions, as a combination of state-of coercive measures of material nature applicable state authorities for violations of financial and legal regulations classify them according to the following reasons: their character (fine, penalty punishment in state revenue funds ) on the grounds of their application (budgetary, tax, banking, currency); the method of enforcement (law rehabilitation (compensation) and exemplary (punitive)); on the subject of responsibility and authorities that they are used [10, p. 65].

Sometimes the legal literature all financial and legal sanctions are divided into two types: banking and budget. However, it does not specify the criteria on which this classification is made.

According O. Leysta, types of responsibility, and therefore the penalties vary in: types of violations and sanctions applied nature Criminal, administrative, disciplinary, property or «material»); order sanctions (judicial and administrative); subject of offense (personal responsibility and responsibility of collective entities - legal entities); means the emergence and implementation (liability arising directly from the law, by virtue of the offense - the duty to compensate property damage and liability arising from the law in the investigation of offenses and sanctions for perpetrators – criminal, administrative, etc.); the nature of the obligation imposed on the offender (with special responsibility duty - to pay damages to pay a fine, serve a prison, and responsibility, which is to enforce the obligation to state agencies, not executed offender - the forced removal of things eviction) [1, p. 91–92].

Dmitrenko E. alone determines the content of credit sanctions as a means of influence used in case of credit discipline and gives a general description of the types of credit sanctions: transfer to special crediting; early recovery of loans; recovery of uncontested basis arrears; suspension of lending [11, p. 147].

In the investigated financial and legal sanctions A. Jwanski follows their classification into the following types: tax, currency, banking, and monetary penalties for violations of cash transactions and on compulsory state social insurance.

Generally, financial Ukrainian legislation provides for two types of financial and legal penalties, fines and interest. Analyze the legal nature of the species. The word «penalty» means a penalty, pecuniary penalty for guilt [12]. Punitive financial and legal penalties (fines) are set to punish the offender.

In accordance with paragraph Article 1.5. 1 of the Law Ukraine dated 21.12.2000. «On the order of repayment obligations of taxpayers to budgets and state trust funds» penalty (fine) – is charged a fixed amount or a percentage of the amount of tax liability (excluding fines and penalties), which handles the taxpayer in connection with the violation of the tax rules as defined by the relevant laws [13].

The scientists highlighted a number of features inherent financial penalty, cannot be replaced by

other charges, the competent authority can, at its discretion exempt from the penalty, imposed along with the collection of arrears of taxes and penalties payable by the taxpayer, the recipient of budgetary allocations by profit left the organization after taxes, recommended.

Penalty is charged by law with late payers for making various payments and fees in the budget. Penalty - fee in the form of interest accrued on the amount of tax debt (excluding penalties) that rises to the taxpayer due to late repayment of tax liability [14, p. 696–697].

The size of the penalty is usually defined as a percentage of the amount of arrears and calculated depending on the length of delay. The fine is thus linked to formal infringement term tax – late performance. The main function of the penalty is to compensate for losses caused to the state [15, p. 319]. Enforcement penalties to the tax authority at the expense of funds in the accounts of the organization, and in their absence or failure - at the expense of other property of the taxpayer in an uncontested manner.

Based on the above, one can identify common features and differences of fines and penalties. Unlike fines, penalties as financial and legal sanction defined in the fold or percentage of «unpaid» or the «cost of manufactured products», «illegally obtained proceeds» and so, in some cases – at times up to non-taxable minimum incomes of citizens. The characteristic feature that distinguishes among financial penalty fines is that its size is set in the normative act is defined in absolute size. As an exception, there is a financial penalty in the fixed amount – a fine of 1700 UAH envisaged for late registration of the legal entity as a payer of excise duty [15].

The principal difference between the fines and penalties is that the basis of application of penalty is committing financial violations - illegal guilty act, and fines are not formally associated with the offense, although its charges are the outcome of the deadline required payments.

The analysis of regulations there are several subspecies of the aforementioned sanctions. Penalty: fixed a fine; Fines are calculated as non-taxable minimum incomes of citizens (providing for penalties in the amount of 1 to 500 non-taxable

minimum incomes); Fines are calculated as part of the tax liability underpayment, cost shopping patent, currency values, etc. (25–50 %); a fine in the amount of abuse.

It should also be noted that penalties of a maximum limit (for example, 50 % of the accrued tax liability). Fine, fine, established on the basis of the discount rate of the National Bank of Ukraine (120 % per annum, double rate); fine, defined as the sum of (0.1 % late payment, arrears of 0.2 %, 0.3 % non-received proceeds) [15, p. 366].

It is believed that is, the separation of the legislative financial - legal sanctions and penalties to apply the most appropriate and quality compared with the classification proposed by the scientists – financiers.

We believe that a clear definition of signs of financial sanctions, which exists in science, finance, wholly satisfied legislator for the classification of financial sanctions, which positively affects the practical application of finance law by all parties to financial relations, and therefore does not generate controversy in the application of the relevant legal provisions and generates fewer court proceedings.

### References

1. *Лейст О. Э.* Структура норм права. Теория государства и права / О. Э. Лейст; под ред. А. С. Пиголкина. – М.: Изд-во МГУ, 1996. – 384 с.
2. *Ровинский Е.* Советское финансовое право: учеб. пос. / Е. Ровинский. – М.: МГЭИ, 1957. – 188 с.
3. *Усенко Р. А.* Фінансові санкції за законодавством України: монографія / Р. А. Усенко; відп. ред. Д. М. Лук'янець. – К.: Дакор, КНТ, 2007. – 164 с.
4. *Титов А. С.* Недоимка: Правовое регулирование взыскания / А. С. Титов. – М.: АО «Центр ЮрИнфоР», 2003. – 218 с.
5. *Музыка О. А.* Фінансове право: навч. посіб. / О. А. Музыка. – К.: Паливода, 2004. – 220 с.
6. *Фінансове право.* Академічний курс: підручник / О. П. Орлюк. – К.: Юрінком Інтер, 2010. – 808 с.
7. *Савченко Л. А.* Фінансове право: навч. посіб. / Л. А. Савченко, А. В. Цимбалюк, В. К. Шкарупа [та ін.]. – Ірпінь: Нац. акад. ДПС України, 2001. – 85 с.

8. *Іванський А. Й.* Фінансово-правова відповідальність: теоретичний аналіз: монографія / А. Й. Іванський. – О.: Юридична література, 2008. – 504 с.

9. *Будько З. М.* Фінансово-правова відповідальність за вчинення податкових правопорушень: дис. ... канд. юрид. наук: 12.00.07 / З. М. Будько. – Запоріжжя, 2005. – 218 с.

10. *Финансовое право: учебник* / под ред. проф. Е. Ю. Грачевой. – М.: Право закон, Колос, 2003. – 384 с.

11. *Дмитренко Е. С.* Фінансове право України. Практикум / Е. С. Дмитренко. – К.: Атіка, 2004. – 216 с.

12. *Про загальнообов'язкове державне соціальне страхування на випадок безробіття: Закон України від 2 березня 2000 р. № 1533-III* // Відомості Верховної Ради України. – 2000. – № 22. – Ст. 171.

13. *Про порядок погашення зобов'язань платників податків перед бюджетами та державними цільовими фондами: Закон України від 21 грудня 2000 р. № 2181-III* // Відомості Верховної Ради України. – 2001. – № 10. – Ст. 44.

14. *Юридическая энциклопедия* / отв. ред. Б. Н. Топорнин. – М.: Юрист, 2001. – 730 с.

15. *Про забезпечення санітарного та епідемічного благополуччя населення: Закон України від 24 лютого 1994 р. № 4004-XII* // Відомості Верховної Ради України. – 1994. – № 27. – Ст. 218.

### References

1. *Leyst O. E.* Struktura norm prava. Teoria gosudarstva i prava / O. E. Leyst; pod red. A. Pyholkina. – Moscow: MGU, 1996. – 384 s.
2. *Rovinsky E.* Sovetskoe finansovoe pravo: uchebnoe posobie dla studentov WYZI. – M.: MGEI, 1957. – 188 s.
3. *Usenko R. A.* Finansovi sankcii za zakonodavstvom Ukrainy: monografia / R. A. Usenko; pod red. D. M. Lukyanets. – K., Dakor, CST, 2007. – 164 s.
4. *Titov A. S.* Nedoimka: pravovoe regylirovanie wzuskania. – Moscow: JSC «Center YurYnfoR», 2003. – 218 s.
5. *Myzuka O. A.* Finansove pravo: navch. posibnuk. – K: Palyvoda, 2004. – 220 s.

6. *Finansove* pravo. Akademichnui kyrs: pidruchnik / O. P. Orlyuk. – K.: Yurinkom Inter, 2010. – 808 s.

7. *Savchenko L. A.* Finansove pravo: navch. posibnik / L. A. Savchenko, A. V. Tsymbaliuk, V. K. Shkarupa [i dr.]. – Irpen: Acad. DPS Ukraine, 2001. – 85 s.

8. *Jwanski A. A.* Finansovo-pravova vadvovidalnist: teoretuchnij analiz: monografia. – AA: Legal Literature, 2008. – 504 s.

9. *Bud'ko Z. M.* Finansovo-pravova vadvovidalnist za vchunenna podetcovuch pravoporychen: dis. cand. yrid. nauk:12.00.07. – Zaporozhye, 2005. – 218 s.

10. *Finansove* pravo: ychebnuk / pod red. prof. E. Y. Hrachevoy. – M: pravo i zakon, KoloS, 2003. – 384 s.

11. *Dmitrenko E. S.* Finansove pravo Ukraine. Praktikum. – K.: Atika, 2004. – 216 s.

12. *Pro zagalnooboviazkove* derjavne sotsialne strachuvanna na vupagok beazrobatta: Zakon Ukrainu vid 02.03.2000 r. № 1533.

13. *Yurigicheskay* enciklopedia / otv.red. B. N. Topornyn. – Moscow: Yurist, 2001. – 730 s.

14. *Pro zabezpechenna* saniternogo ta apedemichnogo blagopolycha naselenna: Zakon Ukrainu vid 24.02.1994 r. № 4004-XII // Vidimisti Vephovnoi Ragu. – 1994. – № 27. – St. 218.